IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3203 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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HARUNBHAI HABIBBHAI GHANCHI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3203 of 2002

MS SUBHADRA G PATEL for Petitioner No. 1

MR AY KOGJE Ld. AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 18/06/2002

ORAL JUDGEMENT

Heard learned counsel Ms SG Patel for the petitioner and Mr. AY Kogje learned AGP for the respondents.

The petitioner has challenged the legality and

validity of the order of detention passed by the Police Commissioner of Rajkot city on 12.11.2001, Annexure-A on number of grounds mentioned in the memo of petition.

The subjective satisfaction is recorded by the Police Commissioner stating that the petitioner is a dangerous person and chronic bootlegger. Having considered the grounds of detention which are on record vide Annexure-B indicates that one criminal case for the offence punishable under the Bombay Prohibition Act has been registered against the present petitioner on 10.11.2001 vide CR No.180/2001 and the trial is pending.

Learned counsel for the petitioner has mainly focussed the arguments on the point that the order of detention is passed without application of mind and with undue haste. One Kishore Ramsing Vaghela referred in the grounds of detention was also detained on the similar grounds by the Police Commissioner. This Kishore Vaghela has challenged the legality and validity of the order of detention before this Court by filing a Special Civil Application No. 1230 of 2002. Learned counsel for the petitioner Ms. Patel states that she herself had appeared for the very petitioner Kishore Vaghela and after some deliberation the Court has quashed the order of detention on merits.

Undisputedly, a criminal case has been registered on 10.11.2001 for the offence punishable under sec. 66(B), 65-A-E, 116(B) and sec. 81 of the Bombay Prohibition Act. The police had seized country made foreign liquor worth Rs.79,000/ packed in 264 bottles. It seems that this is a solitary case. On 10.11.2001 and 11.11.2001 statements of the witnesses were recorded and these statements were verified on 11.11.2001 and on the next day i.e. on 12.11.2001 the order of detention has been passed. It is submitted that is a clear case of non-application of mind and undue haste. In support of her submissions, Ms. Patel has placed reliance on the decision in the case of Ranubhai Bhikhabhai Bharwad (Vekaria) vs. State of Gujarat & Others, 2000(3) GLR 2696 (Vol. XLI (3). This Court, while quashing the order of detention has considered the ratio of the decision in the case of Kalidas C. Kahar vs. State of Gujarat, 1993(2) GLR 1659.

The ratio of the above decision is squarely applies to the facts of the present case. So, without going into the merits of the other grounds mentioned in the petition, this Court is inclined to allow this petition.

In the result, this petition is allowed. The impugned order of detention dated 12.11.2001 passed by the Police Commissioner, Rajkot City is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if he is not required to be detained in any other case. Rule is made absolute. DS Permitted.

(C.K. BUCH, J.)

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